



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 888 OF 2024

GOPINATH SHANKAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondents : Ms. S. S. Joshi
...

CORAM : S. G. MEHARE, J.

DATE : 03-07-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for respondents.
2. The applicant seeks bail in C.R.No.148 of 2018 registered with Police Station Sonpeth, District Parbhani, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code.
3. This application of bail of its own kind. The applicant was granted temporary bail due to the COVID-19 pandemic. He did not surrender. However, the trial progressed to the recording of his statement under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."). His statements were recorded on 06.06.2023. The matter was listed for final arguments. Thereafter, he surrendered after the orders of this Court. However, to date, the trial has not been concluded.

4. The Roznama of the trial Court revealed that on 26.06.2023, the statement of the accused under Section 313 of the Cr.P.C., were recorded, and the matter was listed on 30.07.2023. On that day, the learned A.P.P. applied to the Court for leave to file necessary documents on record. The learned additional district judge-1 and sessions judge, Aurangabad, decided on the application on 18.01.2024. The Court barely allowed the production. The matter proceeded ahead for hearing on Exhibit-166 and final arguments. On 06.07.2023, the learned A.P.P. had moved an application Exhibit-170 to take the applicant in custody. On 26.09.2023, learned counsel for the accused filed a reply to application Exhibit-170. The arguments were heard on Exhibits 166 and 170 on 11.12.2023, and orders were reserved. Then, the matter was adjourned from time to time. In the meantime, the writ petition was filed before the Honourable Division Bench of this Court. On 04.04.2024, in Criminal Writ Petition No.328 of 2024, the Honourable Division Bench directed to issue a non-bailable warrant against the applicant for his production before the learned Judicial Magistrate. On the next day, the applicant *suo moto* surrendered on 05.04.2024. The learned Sessions Court took him in custody. On 16.06.2024, the complainant moved an application in person, Exhibit-183, praying to call the papers and phone numbers. The Court rejected that application on 30.04.2024. Then, the applicant filed an application for bail on 06.05.2024. Before that, on

30.04.2024, the accused/applicant had filed a pursis for listing the matter for arguments, showing his readiness to advance the arguments on merits. On 24.05.2024, the learned A.P.P. has filed pursis Exhibit-190. However, the arguments were not advanced. On 07.06.2024 and 19.06.2024, the learned A.P.P. sought time to advance the arguments. On 25.06.2024, the learned A.P.P. surprisingly moved an application Exhibit-193 for reopening the case and examining the witnesses.

5. Learned counsel for the applicant has a serious objection that though the applicant did not appear after *interim* bail, the trial proceeded till recording the statement under Section 313 of the Cr.P.C. No complaints were made during the trial. However, soon after his surrender, after the order of this Court, tactics were applied to protract the trial. Application Exhibit 197 is *mala fide* only with the intent to keep the applicant behind bars. The prosecution has been acting upon the will and desire of the complainant. The learned A.P.P. made a conscious decision not to examine the remaining witnesses after examining 17 witnesses. However, the learned A.P.P. submitted that due to oversight, the witness on the medical examination of the accused remained to be examined as the accused/applicant was injured. Undue diligence has been shown with *mala fide* intention to keep the applicant behind bars. He never fled away from the trial. Therefore, his detention for recording further evidence, if any, the prosecution

wanted to produce is not essential.

6. The question has been raised: Whether the trial is fair.

7. Learned A.P.P. has opposed the application. She submits that the applicant has violated the bail conditions. Instead of surrendering *suo moto*, this Court was required to issue a non-bailable warrant against him. He took advantage of the situation. It is the duty of the prosecution to take care and to produce all relevant witnesses. There were *mala fides* on the part of the prosecution in filing Exhibit-197. The application for reopening the case and recording the evidence of material witnesses was rightly filed.

8. In view of the above discussion, facts appears that the applicant was attending the trial till it was about to conclude, but suddenly, the application was filed by the learned A.P.P. The Public Prosecutor is the master of the case. He is the right person to decide how to conduct the trial and how to address the Court. The parties to the proceedings, particularly the witnesses and the complainant, should not address the Court directly, but this seems to be a changed scenario of the day. Though the application is filed through the Public Prosecutor, he was expected to apply the mind. He should not act mechanically. By filing Exhibit-183, sufficient time was spent, and the matter was protracted. The applicant was also not fair. He was enjoying the liberty granted to

him due to the Covid-19 Pandemic. However, after the order of this Court, he surrendered. However, There should be a fair trial. Recalling the witnesses does not appear *bona fide*. During the period of temporary bail granted to the applicant, there were no complaints of threatening the witnesses, and he did not flee from trial. In this peculiar scenario, the Court believes that his detention would serve no purpose. Hence, the order:-

ORDER

- i) The application is allowed.
- ii) Applicant Gopinath Shankar Jadhav be released on bail on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in the above crime for the aforesaid offences, on the conditions that
 - (a) He shall attend the trial on each and every effective date.
 - (b) He shall not tamper with the prosecution witnesses.

**(S. G. MEHARE)
JUDGE**